

Complaint of Verizon Massachusetts
Concerning Customer Transfer Charges
Imposed by Broadview Networks, Inc.

² *Id.* at 2.

prejudice and to direct Verizon to pay the lawfully tariffed charges that it to date has unilaterally refused to do.

ARGUMENT

As Verizon concedes, Section 251(c)(2)(D) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Federal Communications Act”), requires that Broadview be allowed to charge Verizon for the performance of tasks comparable to those for which Verizon charges Broadview.³ Moreover, under the Federal Communications Act, “rates charged by competitors are presumed reasonable as long as they do not exceed the comparable rate charged by the incumbent.”⁴ Hence, the issue here is relatively straightforward – do the Broadview Service Transfer Charges recover costs associated with tasks comparable to those for which Verizon charges Broadview at like rates.

This precise issue was addressed by the Federal Communications Commission (“FCC”) in an arbitration proceeding conducted by the FCC following its preemption of the jurisdiction of the Virginia State Corporation Commission (“VASCC”).⁵ The FCC undertook the arbitration because the VASCC had declined to

³ *In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act of Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, 18 FCC Rcd 25,887, ¶ 189 (CCB released Dec. 12, 2003) (“*Arbitration Order*”).

⁴ *Id.* at ¶ 205, fn. 679 (citing “*Local Competition First Report and Order*, 11 FCC Rcd at 16,040 - 42, paras. 1,085 - 89”).

⁵ *Arbitration Order*, 18 FCC Rcd 25,887 at ¶ 1. Verizon attempts to negate the adverse impact of the FCC’s decision by opining that its “factual finding . . . is simply incorrect, and is a subject of a pending petition for reconsideration and clarification.” Under the FCC’s Rules, the filing of a petition for reconsideration does not stay the effectiveness of an agency order. 47 C.F.R. § 1.429(k). While Verizon may disagree with the FCC’s findings and conclusions, those findings and conclusions nonetheless remain in full force and effect.

arbitrate various interconnection disputes between Cavalier Telephone, LLC (“Cavalier”) and Verizon Virginia, Inc. (“Verizon VA”). Among the many matters arbitrated by the FCC was a proposal by Cavalier to charge Verizon VA for “performing corresponding and comparable ‘winback’ functions to those for which Verizon charges it.”⁶

In defending its proposed charge, Cavalier emphasized that “when it turned a customer over to Verizon, it perform[ed] almost the same services for Verizon as when Verizon turns a customer over to it.”⁷ Verizon, while “admit[ting] that both parties perform ‘virtually the same functions’ when either carrier moves a customer to the other,” countered that it did not “charge[] Cavalier for any of these functions.”⁸ Moreover, Verizon argued that “the ‘winback’ services for which Cavalier propose[d] to charge Verizon, such as deleting switch translations, porting a number, and discontinuing customer billing, are retail functions properly charged to an end-user.”⁹

Rejecting Verizon’s claims, the FCC “permit[ted] Cavalier to impose a winback charge on Verizon for the tasks it performs when it migrates a customer to Verizon.”¹⁰ “Cavalier’s work in connection with a Verizon winback” the FCC found, “is similar in purpose and scope to the work that Verizon is responsible for performing when Cavalier submits a local service request to Verizon to move a customer from Verizon to Cavalier.”¹¹ Moreover, the FCC added that “contrary to Verizon’s allegations, the work

⁶ *Arbitration Order*, 18 FCC Rcd 25,887 at ¶ 198.

⁷ *Id.* at ¶ 199.

⁸ *Id.* at ¶ 200.

⁹ *Id.*

¹⁰ *Id.* at ¶ 200.

¹¹ *Id.* at ¶ 204.

Cavalier performs in connection with the Verizon winback is not solely for the benefit of Cavalier's internal records.”¹² And as to the level of the Cavalier charges, the FCC concluded that it was “reasonable to permit Cavalier to charge Verizon the rate Verizon charges it for the same or similar service.”¹³

In short, the FCC – following a full evidentiary hearing -- considered and rejected the very arguments Verizon asserts here, and for good reason. Broadview's Service Transfer Charges, which include a lesser charge if Verizon avails itself of Broadview's electronic processes (“Electronic Processing”) and a greater charge if Verizon declines to utilize these interfaces (“Manual Processing”),¹⁴ mirror Verizon's Service Order Charge and Manual Intervention Surcharge. Moreover, each of Broadview's Electronic Processing and Manual Processing Surcharges recovers costs associated with activities undertaken by Broadview on behalf of Verizon. And finally, these costs, as well as the activities associated with them, are comparable to those for which Verizon assesses Service Order Charges and Manual Intervention Surcharges on Broadview.

Verizon's Manual Intervention Surcharge presents perhaps the clearest example of this comparability of tasks and charges. The Manual Intervention Surcharge “appl[ies] when the electronic ordering system is not used to place an order for services.”¹⁵ In other words, a Manual Intervention Surcharge is levied by Verizon if a

¹² *Arbitration Order*, 18 FCC Rcd 25,887 at ¶ 204

¹³ *Id.* at ¶ 205, fn. 679.

¹⁴ Broadview Networks, Inc. Tariff M.D.T.E. No. 2, Section 9.1.

¹⁵ Verizon New England Inc. Tariff M.D.T.E., No. 17, Part A, § 3.3.2.

mechanized interface is available and a CLEC declines to use it.¹⁶ For example, Verizon charges a Manual Intervention Surcharge if a CLEC submits a request by facsimile, rather than through an electronic interface. The Manual Intervention Surcharge thus recovers costs which a CLEC causes Verizon to incur by refusing to take advantage of the most efficient and cost-effective means of interacting with Verizon.

The “Manual Processing” component of Broadview’s Service Transfer Charges likewise is intended to recover the additional costs Broadview incurs when Verizon declines to utilize Broadview’s electronic processes. As described in the attached Affidavit of Paul Pennisi, Broadview supports (and has supported for nearly three years) a “Web Center” – www.broadviewnet.com/CLEC -- which permits Verizon and other CLECs to identify and view customer service records (“CSRs”) without Broadview’s intervention and to submit, review and check the status of local service requests (“LSRs”) electronically. To date, however, Verizon, as Mr. Pennisi recounts, has steadfastly refused to utilize Broadview’s Web Center, choosing instead to email OBF forms via PDF documents – the email equivalent of faxing. Verizon’s refusal to use Broadview’s Web Center not only requires Broadview to manually retrieve and provide CSRs to Verizon and to manually print LSRs and key their contents into Broadview’s systems, but requires Broadview to field calls from Verizon verifying order status which would be available on-line if Verizon had utilized Broadview’s Web Center. Moreover, these additional resource commitments are amplified each time Verizon modifies -- either on its own accord or as a result of data flaws identified by Broadview -- or cancels an order. Accordingly, the “Manual Processing” element of Broadview’s Service Transfer

¹⁶ *E.g.*, Verizon New England Inc. Tariff M.D.T.E. No. 17, Part B, § 5.1.5.

Charges mirrors Verizon's Manual Intervention Surcharge, allowing Broadview to recover additional costs imposed on it by Verizon's gratuitous refusal to use Broadview's Web Center in the same fashion that Verizon recovers the additional costs it would incur if Broadview refused to use Verizon's electronic interfaces.

The "Electronic Processing" component of Broadview's Service Transfer Charges also recovers costs associated with tasks comparable to those Verizon charges Broadview to perform. As described by Mr. Pennisi, when a carrier wins a customer from Broadview, Broadview, at the request of that carrier, provides the carrier with the customer's CSR through the Broadview Web Center. The requesting carrier, having confirmed the identity of the customer, submits an LSR electronically to Broadview. Broadview reviews the LSR for completeness and accuracy, confirming customer name, address and phone number. The LSR is either confirmed or placed in jeopardy for reason of data flaws by Broadview or modified or cancelled by the requesting carrier. If the LSR is placed in jeopardy, Broadview "queries" back to the requesting carrier for correction, waits for a response, then repeats the process upon receipt of a resubmitted order. Once an LSR is confirmed, Broadview issues a firm order confirmation ("FOC"), having logged and inputted a service order into its internal systems in order to conduct a properly scheduled, confirmed and coordinated disconnection and transfer of the customer. Thereafter, Broadview deletes associated switch translations and facilitates number porting.

Verizon's Service Order Charge recovers the costs associated with the performance of those functions necessary "to issue an order in the TISOC organization

resulting from a CLEC request for service,”¹⁷ and applies anytime a CLEC makes such a request. The Telecom Industry Services Operating Center (“TISOC”) “is the initial point of contact for the requesting CLEC.”¹⁸ Verizon describes the functions of the TISOC as follows:

“[T]he CLEC’s service order requests are logged and assigned to a representative who examines the request for accuracy and verifies that the request contains all the information necessary to process the order. Errors and further queries related to the order are referred back to the carrier. Upon completion of this review of the request, the order is entered into the appropriate service order system. In addition, the TISOC corrects the order for any inaccurate or missing information and determines whether field survey is required. The TISOC also issues the orders for termination of service.”¹⁹

And the activities that Verizon used to compute the costs associated with a Service Order Charge were described as follows:

Receive Local Service Request (LSR) from the CLEC and print, review, type and confirm the order request for new installation and/or account.

Receive Local Service Request (LSR) from the CLEC and print, review, type and confirm the order request for changes in existing account.

Respond and/or change CLEC’s pending Local Service Request.²⁰

The similarities between the costs Verizon’s Service Order Charge is designed to recover and the costs the “Electronic Processing” element of Broadview’s Service Transfer Charges is designed to recover are manifest. Verizon, however, declares -- without evidentiary support for the contention -- that it does not charge CLECs for

¹⁷ BA-NY Wholesale Non-Recurring Costs Model, p. 3.

¹⁸ *Id.* at Att. B.

¹⁹ *Id.*

²⁰ *Id.* at Att. C.

transferring a customer to them.²¹ Yet when this contention was scrutinized in an adjudicatory proceeding, the trier of fact found otherwise.

As noted previously, the FCC, having made note of Verizon's admission that it and a CLEC "perform 'virtually the same functions' when either carrier moves a customer to the other," as well as Verizon's denial "that it charges . . . for any of these functions," found that "Verizon . . . perform[s] similar functions to those performed by . . . [the CLEC] in the winback process, and that the associated costs may be recovered in Verizon's \$10.81 Service Order Connect and \$2.68 Installation charges."²² As the FCC explained:

[The CLEC] is responsible for affecting certain key functions for the benefit of Verizon in the course of transferring customers from [the CLEC] . . . to Verizon. [The CLEC] is responsible for effecting certain key functions for the benefit of Verizon in the course of transferring customers from . . . [the CLEC] to Verizon . . . [T]he move from . . . [the CLEC] to Verizon cannot be conducted unilaterally by Verizon, and, contrary to Verizon's allegations, the work . . . [the CLEC] performs in connection with the Verizon winback is not solely for the benefit of Verizon's internal records. In fact, we find that . . . [the CLEC's] work in connection with a Verizon winback is similar in purpose and scope to the work that Verizon is responsible for performing when . . . [the CLEC] submits a local service request to "Verizon to move a customer from Verizon to . . . [the CLEC]."²³

²¹ Verizon Complaint at 4, fn. 3.

²² *Arbitration Order*, 18 FCC Rcd 25,887 at ¶¶ 200, 205.

²³ *Id.* at ¶ 204. Verizon's attempt to counter the force of the FCC's findings by reference to decisions of the New York Public Service Commission ("NYPSC") and the Pennsylvania Public Utility Commission ("PAPUC") is unavailing. In both cases, the actions taken were in the context of a rate which mirrored Verizon's rates for performing hot cuts. Thus, the NYPSC predicated its decision upon a finding that it was Verizon that performed "the lion's share of the physical network activity necessary for a customer transfer," and reflected the NYPSC's conclusion that the tasks a CLEC performs in facilitating the transfer of a customer to Verizon are "not analogous to most of the tasks Verizon perform[ed]" in undertaking a hot cut. *Complaint of Verizon New York Inc. Concerning Customer Transfer Charges Imposed by TC Systems, Inc.*, Case 03-C-0636, pp. 5-6 (NYPSC Feb. 13, 2004). As Verizon ultimately concedes, the PAPUC

[footnote continued on following page]

The second argument presented by Verizon in its Complaint – that Broadview must demonstrate that its Service Transfer Charges are just and reasonable – can be dispensed with summarily.²⁴ As Broadview has shown above, its Service Transfer Charges are set at the level of Verizon’s Service Order Charge and Manual Intervention Surcharge. Moreover, Broadview has demonstrated that the costs recovered through these charges are associated with tasks comparable to those for which Verizon levies its Service Order Charge and Manual Intervention Surcharge on Broadview. As noted above, Section 251(c)(2)(D) of the Federal Communications Act requires that Broadview be allowed to charge Verizon for the performance of tasks comparable to those for which Verizon charges Broadview.²⁵ And under the Federal Communications Act, “rates charged by competitors are presumed reasonable as long as they do not exceed the comparable rate charged by the incumbent.”²⁶

[footnote continued from preceding page]

did not reject a “similar charge[.]” Rather, the PAPUC suspended and investigated a proposed charge which like the charge rejected by the NYPSC, mirrored Verizon’s hot cut charges. *Pennsylvania Public Utility Commission v. TCG Delaware Valley, Inc.*, Docket No. R-00027928 (PAPUC Dec. 19, 2002). The carrier proposing the charge elected to withdraw it rather than incur the costs of the investigation.

²⁴ Verizon’s suggestion that Broadview’s Service Transfer Charges do not apply to Verizon because they are resident in Broadview’s access tariff can also be summarily dismissed. On the face of Broadview’s tariff, the charges apply to any “requesting local exchange carrier.” Broadview Networks, Inc. Tariff M.D.T.E. No. 2, Section 9.1. The ambiguity Verizon seeks to create simply does not exist.

²⁵ *Arbitration Order*, 18 FCC Rcd 25,887 at ¶ 189.

²⁶ *Id.* at ¶ 205, fn. 679 (citing “*Local Competition First Report and Order*, 11 FCC Rcd at 16,040 - 42, paras. 1,085 - 89”).

CONCLUSION

By reason of the foregoing, Broadview urges the Commission to deny the Verizon Complaint with prejudice and to direct Verizon to pay not only the Service Transfer Charges that are levied in the future, but to pay all of the outstanding charges which Verizon has heretofore unilaterally refused to pay.²⁷ Just as Broadview must pay Verizon's tariffed charges in order to allow Verizon to recover costs incurred by it for the benefit of Broadview, so too should Verizon be required to pay Broadview charges designed to recover costs it incurs for the benefit of Verizon. Broadview suffers from a competitive disadvantage if, unlike Verizon, it must perform services without compensation. Fairness and equity dictate that Broadview should be paid for work it performs benefiting Verizon.

At a minimum, Broadview urges the Commission to uphold the "Manual Processing" element of Broadview's Service Transfer Charges. Whatever the Commission's holdings with respect to the "Electronic Processing" element of these

²⁷ Although Broadview's Service Transfer Charges have been tariffed for more than a year and Verizon has incurred and been billed numerous "Manual Processing" Service Transfer Charges, Verizon has yet to pay a single charge.

charges, Verizon should not be able to force Broadview to incur additional costs by declining to utilize Broadview's mechanized interface.

ANSWER TO NUMBERED PARAGRAPHS

1. Broadview admits the allegations in Statement of Fact Paragraph 1 on information and belief.

2. Broadview admits the allegations in Statement of Fact Paragraph 2.

3. Broadview denies that there is any ambiguity in the application of its Service Transfer Charges and admits the remaining allegations in Statement of Fact Paragraph 3.

4. The statute speaks for itself. Broadview denies the allegations in Summary of Claim Paragraph 1. Further Answering, *see* Argument, *supra*.

5. Broadview denies the allegations in Summary of Claim Paragraph 2. Further Answering, *see* Argument, *supra*.

6. Broadview denies the allegations in Summary of Claim Paragraph 3. Further Answering, *see* Argument, *supra*.

7. Broadview denies the allegations in Summary of Claim Paragraph 4. Further Answering, *see* Argument, *supra*.

8. Broadview denies the allegations in Summary of Claim Paragraph 5. Further Answering, *see* Argument, *supra*.

9. Broadview denies the allegations in Summary of Claim Paragraph 6. Further Answering, *see* Argument, *supra*.

10. Broadview denies the allegations in Summary of Claim Paragraph 7. Further Answering, *see* Argument, *supra*.

11. Broadview denies the allegations in Summary of Claim Paragraph 8.
Further Answering, *see* Argument, *supra*.

12. Broadview denies the allegations in Summary of Claim Paragraph 9.
Further Answering, *see* Argument, *supra*.

13. Broadview denies the allegations in Summary of Claim Paragraph 10.
Further Answering, *see* Argument, *supra*.

Respectfully submitted,

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February 21, 2005

CERTIFICATE OF SERVICE

I, Charles C. Hunter, do hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(I) (Department's Rules of Practice and Procedure).

Dated at Valhalla, New York this 21st day of February, 2005.

Charles C. Hunter

Counsel for Broadview Networks, Inc.